

Adopted	Rejected
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COMMITTEE REPORT

YES:	8
NO:	4

MR. SPEAKER:

*Your Committee on Labor and Employment, to which was referred House Bill 1442, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 20-7.5-1-1 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. ~~Intent~~: The Indiana
- 4 general assembly ~~hereby~~ declares that:
- 5 (a) (1) the citizens of Indiana have a fundamental interest in the
- 6 development of harmonious and cooperative relationships
- 7 between school corporations and their ~~certificated~~ employees;
- 8 (b) (2) recognition by school employers of the right of school
- 9 employees to organize and acceptance of the principle and
- 10 procedure of collective bargaining between school employers and
- 11 school employee organizations can alleviate various forms of
- 12 strife and unrest;
- 13 (c) (3) the state has a basic obligation to protect the public by
- 14 attempting to prevent any material interference with the normal

public school educational process; **and**

~~(4)~~ **(4)** the relationship between school corporation employers and ~~certificated~~ school employees is not comparable to the ~~relation~~ **relationship** between private employers and employees among others for the following reasons:

(i) **(A)** A public school corporation is not operated for profit but to ~~insure~~ **ensure** the citizens of the state rights guaranteed them by the ~~Indiana State~~ **Indiana State** Constitution ~~of the State of~~ **Indiana.**

(ii) **(B)** The obligation to educate children and the methods by which such education is effected will change rapidly with increasing technology, the needs of an advancing civilization, and requirements for substantial educational innovation.

(iii) **(C)** The Indiana general assembly has delegated the discretion to carry out this changing and innovative educational function to the local governing bodies of school corporations, composed of citizens elected or appointed under applicable law, a delegation which these bodies may not and should not bargain away. ~~and.~~

(iv) **(D)** Public school corporations have different obligations with respect to ~~certificated~~ school employees under constitutional and statutory requirements than private employers have to their employees.

SECTION 2. IC 20-7.5-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. As used in this chapter:

(a) "School corporation" means any local public school corporation established under Indiana law and, in the case of public vocational schools or schools for children with disabilities established or maintained by two (2) or more school corporations, shall refer to such schools.

(b) "Governing body" shall mean the board or commission charged by law with the responsibility of administering the affairs of the school corporation.

(c) "School employer" means the governing body of each school corporation and any person or persons authorized to act for the governing body of the school employer in dealing with its employees.

(d) "Superintendent" shall mean the chief administrative officer of

any school corporation or any person or persons designated by the officer or by the governing body to act in the officer's behalf in dealing with school employees.

(e) "School employee" means any full-time ~~certificated~~ person in the employment of the school employer. A school employee shall be considered full time even though the employee does not work during school vacation periods and accordingly works less than a full year. There shall be excluded from the meaning of school employee supervisors, confidential employees, **and** employees performing security work. ~~and noncertificated employees.~~

(f) "Certificated employee" means a person whose contract with the school corporation requires that ~~he~~ **the person** hold a license or permit from the **Indiana** state board of education or a commission thereof as provided in IC 20-6.1.

(g) "Noncertificated employee" means any school employee whose employment is not dependent upon the holding of a license or permit as provided in IC 20-6.1.

(h) "Supervisor" means any individual who has:

(1) authority, acting for the school corporation, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline school employees;

(2) responsibility to direct school employees and adjust their grievances; or

(3) responsibility to effectively recommend the action described in ~~subsections~~ **subdivisions** (1) through (2);

that is not of a merely routine or clerical nature but requires the use of independent judgment. The term includes superintendents, assistant superintendents, business managers and supervisors, directors with school corporation-wide responsibilities, principals and vice principals, and department heads who have responsibility for evaluating teachers.

(i) "Confidential employee" means a school employee whose unrestricted access to confidential personnel files or whose functional responsibilities or knowledge in connection with the issues involved in dealings between the school corporation and its employees would make the confidential employee's membership in a school employee organization incompatible with the employee's official duties.

(j) ~~"Employees "~~**"Employee** performing security work" means any school employee whose primary responsibility is the protection of

personal and real property owned or leased by the school corporation or who performs police or quasi-police powers.

(k) "School employee organization" means:

(1) for certificated employees, any organization which has school employees as members and one (1) of whose primary purposes is representing school employees in dealing with their school employer; and

(2) for noncertificated employees, an organization that has school employees as members.

The term includes any person or persons authorized to act on behalf of such organizations.

(l) "Exclusive representative" means the school employee organization which has been certified for the purposes of this chapter by the board or recognized by a school employer as the exclusive representative of the employees in an appropriate unit as provided in section 10 of this chapter or the person or persons duly authorized to act on behalf of such representative.

(m) "Board" means the Indiana education employment relations board provided by this chapter.

(n) "Bargain collectively" means the performance of the mutual obligation of the school employer and the exclusive representative to meet at reasonable times to negotiate in good faith with respect to items enumerated in section 4 of this chapter and to execute a written contract incorporating any agreement relating to such matters. Such obligation shall not include the final approval of any contract concerning these or any other items. Agreements reached through collective bargaining are binding as a contract only if ratified by the governing body of the school corporation and the exclusive representative. The obligation to bargain collectively does not require the school employer or the exclusive representative to agree to a proposal of the other or to make a concession to the other.

(o) "Discuss" means the performance of the mutual obligation of the school corporation through its superintendent and the exclusive representative to meet at reasonable times to discuss, to provide meaningful input, **and** to exchange points of view, with respect to items enumerated in section 5 of this chapter. This obligation shall not, however, require either party to enter into a contract, to agree to a proposal, or to require the making of a concession. A failure to reach

an agreement on any matter of discussion shall not require the use of any part of the impasse procedure, as provided in section 13 of this chapter. Neither the obligation to bargain collectively nor to discuss any matter shall prevent any school employee from petitioning the school employer, the governing body, or the superintendent for a redress of the employee's grievances either individually or through the exclusive representative, nor shall either such obligation prevent the school employer or the superintendent from conferring with any citizen, taxpayer, student, school employee, or other person considering the operation of the schools and the school corporation.

(p) "Strike" means concerted failure to report for duty, willful absence from one's position, stoppage of work, or abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, without the lawful approval of the school employer, or in any concerted manner interfering with the operation of the school employer for any purpose.

(q) "Deficit financing" with respect to any budget year shall mean expenditures in excess of money legally available to the employer.

SECTION 3. IC 20-7.5-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. (a) A school employer shall discuss with the exclusive representative of certificated employees and may but shall not be required to bargain collectively, negotiate, or enter into a written contract concerning or be subject to or enter into impasse procedures on the following matters:

- (1) Working conditions, other than those provided in section 4 of this chapter.
- (2) Curriculum development and revision.
- (3) Textbook selection.
- (4) Teaching methods.
- (5) Hiring, promotion, demotion, transfer, assignment, and retention of certificated employees, and changes to any of the requirements set forth in IC 20-6.1-4.
- (6) Student discipline.
- (7) Expulsion or supervision of students.
- (8) Pupil-teacher ratio.
- (9) Class size or budget appropriations.

However, any items included in the 1972-1973 agreements between any employer school corporation and the employee organization shall

1 continue to be bargainable.

2 (b) A school employer shall discuss with the exclusive
3 representative of noncertificated employees and may (but is not
4 required to) bargain collectively, negotiate, be subject to, or enter
5 into impasse procedures or enter into a written contract
6 concerning the following matters:

7 (1) Working conditions, other than those provided in section
8 4 of this chapter.

9 (2) Selection, assignment, or promotion of personnel.

10 Any items included in the 1998-1999 agreements between an
11 employer school corporation and an employee organization
12 continue to be bargainable.

13 ~~(b)~~ (c) Nothing shall prevent a superintendent or his designee from
14 making recommendations to the school employer.

15 ~~(c)~~ (d) This chapter may not be construed to limit the rights of the
16 school employer and the exclusive representative to mutually agree to
17 the matters authorized under IC 20-6.1-4-14.5.

18 SECTION 4. IC 20-15 IS ADDED TO THE INDIANA CODE AS
19 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
20 1999]:

21 **ARTICLE 15. EMPLOYMENT PROTECTION FOR**
22 **EDUCATIONAL EMPLOYEES**

23 **Chapter 1. Definitions**

24 **Sec. 1. The definitions in this chapter apply throughout this**
25 **article.**

26 **Sec. 2. "Board" refers to the Indiana education employment**
27 **relations board established by IC 20-7.5-1-9.**

28 **Sec. 3. "Classification seniority" means the length of the most**
29 **recent continuous service in an employee's classification with a**
30 **single employer.**

31 **Sec. 4. "Employee" refers to either of the following:**

32 (1) An employee of a school corporation (as defined in
33 IC 20-8.1-1-1) whose employment is not dependent upon the
34 holding of a license or permit as described in IC 20-6.1.

35 (2) An employee of a state educational institution (as defined
36 in IC 20-12-0.5-1).

37 **Sec. 5. "Employer" means the following:**

38 (1) For an employee of a school corporation, the term has the

1 meaning set forth in IC 20-7.5-1-2.

2 (2) For an employee of a state educational institution, the term
3 means the state educational institution.

4 Sec. 6. "Just cause", as the term pertains to the discipline of
5 employees, includes any of the following:

6 (1) Falsification of an employment application to obtain
7 employment through subterfuge.

8 (2) Knowing violation of a reasonable and uniformly enforced
9 rule of an employer.

10 (3) Unsatisfactory attendance, if the employee is unable to
11 show good cause for the employee's absences or tardiness.

12 (4) Damaging the employer's property through willful
13 negligence.

14 (5) Refusing to obey lawful instructions.

15 (6) Reporting to work under the influence of alcohol or drugs
16 or consuming alcohol or drugs on the employer's premises or
17 while operating the employer's vehicles during work hours.

18 (7) Conduct endangering the safety of the employee or any
19 other employees.

20 (8) Incarceration in jail following a conviction of a
21 misdemeanor or felony by a court with jurisdiction or for any
22 breach of duty in connection with the employee's employment
23 that is reasonably owed the employer by an employee.

24 Chapter 2. Classification

25 Sec. 1. An employee may not attain classification seniority until
26 completion of a probationary period of thirty (30) days, at which
27 time classification seniority relates back to the employee's date of
28 hire.

29 Sec. 2. If a permanent or prolonged reduction within any
30 classification of employees is determined to be necessary by an
31 employer, classification seniority shall be the determining factor in
32 making the reduction and any subsequent recall from reduction.

33 Chapter 3. Representation

34 Sec. 1. An employee is entitled to representation by an employee
35 organization or legal counsel, or both, during any proceeding
36 under this article.

37 Chapter 4. Discipline and Discharge of Employees

38 Sec. 1. An employee may be disciplined in the following manner

1 **and only for just cause:**

2 **(1) Before suspension or discharge, the employee must be:**

3 **(A) informed in writing of all details of any offense or**
4 **violation:**

5 **(i) with which the employee is charged; and**

6 **(ii) that would constitute just cause for discipline; and**

7 **(B) given a reasonable time to correct the behavior**
8 **constituting the identified offense or violation described in**
9 **clause (A).**

10 **(2) If the employee fails to correct the behavior within a**
11 **reasonable time after an official written warning, the**
12 **employee may be suspended without pay for not longer than**
13 **thirty (30) days. In this case, the employee must be given:**

14 **(A) written notice of all offenses or violations for which the**
15 **employee is being suspended; and**

16 **(B) the opportunity to meet and discuss with the employer**
17 **the proposed disciplinary action at least forty-eight (48)**
18 **hours before the employee's suspension.**

19 **(3) If the employee fails to correct the behavior within a**
20 **reasonable time after the employee's suspension, the employee**
21 **may be discharged by the employer.**

22 **Sec. 2. A discharge may not take effect unless at least ten (10)**
23 **days before the effective date of the dismissal, the employer:**

24 **(1) provides the employee with written notice of all offenses or**
25 **violations for which the employee is being discharged; and**

26 **(2) affords the employee an opportunity to request, in writing,**
27 **a hearing before an impartial hearing examiner as set forth in**
28 **IC 20-15-5.**

29 **Sec. 3. A request for a hearing under IC 20-15-5 must be made**
30 **by an employee before the effective date of the discharge. If the**
31 **employee fails to request the hearing, the employee is considered**
32 **discharged on the effective date of the employer's written notice.**

33 **Sec. 4. If the employee requests a hearing under IC 20-15-5, the**
34 **employer may suspend the employee with pay upon the effective**
35 **date of discharge, pending the determination of the hearing**
36 **examiner.**

37 **Sec. 5. The employer may suspend with pay an employee**
38 **without notice pending discharge if the employer reasonably**

believes the nature of the employee's misconduct warrants immediate suspension. In this case, the employer shall afford to the employee, after the suspension, the formal procedures offered in section 1 of this chapter.

Chapter 5. Hearings

Sec. 1. Upon receipt of a written request by an employee subject to discharge as described in IC 20-15-4-2, the employer shall request the board to appoint a hearing examiner to preside over the hearing.

Sec. 2. The hearing examiner has the following duties:

- (1) To give the notice provided in section 3 of this chapter.
- (2) To schedule the hearing at a specified date, time, and place with the authority to postpone the date and time or change the place for any good cause.
- (3) To take full charge of the hearing in accordance with IC 4-21.5-3-25 and IC 4-21.5-3-26, subject to this chapter.
- (4) To render a written decision in the matter, including findings of fact and conclusions of law, that is binding on all parties as of the date of the decision and that must contain a notice of the right to seek review of the decision before the board.
- (5) To file the original of the hearing examiner's findings, conclusions, and decision, along with the record in the case, with the board.
- (6) To cause a copy of the hearing examiner's findings, conclusions, and decision to be served upon each of the parties.

Sec. 3. The following constitutes the hearing procedures by which an employee may be discharged:

- (1) The hearing examiner, not more than five (5) days after the hearing examiner's appointment, shall send notice to the parties of the date, time, and location set for the hearing.
- (2) The hearing examiner shall conduct the hearing under IC 4-21.5-3-25 and IC 4-21.5-3-26.

Sec. 4. Any party to the hearing who is aggrieved by the decision of the hearing examiner may appeal the decision to the board as follows:

- (1) Not more than twenty (20) days after the date the hearing

1 examiner files the hearing examiner's findings, conclusions,
2 and decision, the party aggrieved by the decision may file a
3 petition for review of the hearing examiner's findings,
4 conclusions, and decision. The filing and pendency of a
5 petition for review shall operate to stay the effectiveness of the
6 decision unless otherwise ordered by the board.

7 (2) The petition for review must be in writing and be filed
8 with the board. At the same time, a copy of the petition for
9 review must also be filed with the opposing party. The petition
10 must specifically set forth the reasons for the objections of the
11 aggrieved party to the decision of the hearing examiner.

12 (3) Not more than ten (10) days after the date on which the
13 petition for review is filed with the board, any party to the
14 proceeding before the hearing officer may file a reply to the
15 petition for review on the board with simultaneous service
16 upon the opposing party. The reply must specifically set forth
17 the party's reply to the objections of the aggrieved party to
18 the decision of the hearing examiner.

19 (4) Not more than fifteen (15) days after the filing of a reply
20 to the petition for review, if any, the board shall render a final
21 decision consisting of the board's findings of fact, conclusions
22 of law, and final order in the matter.

23 (5) A party to the board's final decision may seek judicial
24 review under IC 4-21.5-5.

25 **Sec. 5. The board is authorized to enforce the board's orders**
26 **and to take other appropriate action, including reinstating an**
27 **employee with back pay.**

28 **Chapter 6. Construction**

1 **Sec. 1. This article may not be construed to limit the application**
2 **of an agreement negotiated between an employer and the**
3 **recognized representative of employees with a particular employer.**

(Reference is to HB 1442 as introduced.)

and when so amended that said bill do pass.

Representative Liggett